

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH CHRISTOFORO,
Plaintiff

vs.

JULIO LUPO
Defendant

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Docket No. 03-12307 RGS

**DEFENDANT'S EMERGENCY MOTION TO STRIKE PLAINTIFF'S
LATE FILED MOTION FOR SUMMARY JUDGMENT**

Now comes the Defendant, Julio Lupo, and moves that this Honorable Court strike the Plaintiff's late filed Motion for Summary Judgment. As reasons in support thereof, the Defendant's counsel states the following:

1. The above-entitled matter was first set for trial on **February 27, 2007**. At the request of the Plaintiff's counsel on **May 22, 2007**, the trial was continued until **October 29, 2007**.
2. Pursuant to the Joint Scheduling Statement, adopted as an Order of the Court, dated **May 17, 2004** (a copy attached as Exhibit 1), "all dispositive motion's are to be filed by **January 15, 2005**".
3. The Plaintiff, without leave of court to file late, filed his Motion for Summary Judgment on **September 17, 2007**.
4. Plaintiff's counsel did not consult with Defendant's counsel, as required by Local Rule 7.1, concerning Plaintiff's plan to file late a Motion for Summary Judgment on the eve of the scheduled trial. (See affidavit of Jay Hodapp attached as Exhibit 2).

Given that the trial in this matter is currently scheduled for **October 29, 2007**, and pursuant to **Local Rule 7.1** any opposition to the Plaintiff's Motion for Summary Judgment must be filed by **October 1, 2007**, the Defendant would request that the Court consider this an emergency motion. Further, given the above stated reasons, the Defendant requests that its Motion to Strike the Plaintiff's Motion for Summary Judgment be allowed.

The Defendant requests a hearing on this Motion.

Respectfully submitted

/s/Joseph W. Monahan, III

Joseph W. Monahan, III, BBO#351100
Thomas J. Freda, BBO# 178150
Monahan & Padellaro
43 Thorndike Street
Cambridge, MA 02141
Tel: (617)494-1188

Dated: September 18, 2007

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NO. 03 CV 12307 RGS

JOSEPH CHRISTOFORO,
Plaintiff

VS.

JULIO LUPO,
FRANK G. COUSINS, JR.,
INDIVIDUALLY AND IN
HIS CAPACITY AS
ESSEX COUNTY SHERIFF, and
CERTAIN UNKNOWN
INDIVIDUALS
Defendants

JOINT STATEMENT

Now come the parties, Joseph Christoforo and Frank Cousins, and pursuant to the Court's Notice of Scheduling Conference and Rule 16.1 (D) of the Local Rules of the United States District Court for the District of Massachusetts, through counsel, who have conferred and do propose the following:

1. Joint Discovery Plan and Motion Schedule

- a) Automatic document disclosure to be completed by May 12, 2004;
- b) Written discovery requests to be filed by October 15, 2004, and responses are to be filed within the time as provided by the applicable rule;
- c) All depositions are to be completed by December 15, 2004;
- d) The plaintiff's expert witnesses shall be designated by January 15, 2005, and defendant's expert witnesses shall be designated within the time allowed by the Local Rules after plaintiff discloses said expert (s) as contemplated by Fed. R. Civ. P. 26(b)(4)(A); designation of experts shall include provision of any information required by the Federal Rules of Civil Procedure and/or the Local

LAW OFFICES
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920-0333

Rules of the District of Massachusetts; any expert depositions shall be completed within the time allowed by the Local Rules of defendant's expert designation;

- e) All dispositive motion's are to be filed by January 15, 2005, and responses are to be filed pursuant to Local Rule 7.1; and
 - f) The plaintiff shall name other parties no later than August 1, 2004.
- 2. The plaintiffs intend to take no more than 6-7 depositions; the defendants a similar number.
 - 3. Certifications regarding each parties consultation with counsel regarding litigation expenses and alternative dispute resolution will be filed separately.

Respectfully Submitted,
JOSEPH CHRISTOFORO,
By His Attorney:



Edward J. McCormick, III
BBO No. 329780
McCormick & Maitland
144 Main Street
P.O. Box 318
Norfolk, MA 02056
(508)520-0333

Respectfully Submitted,
FRANK G. COUSINS, JR.,
By His Attorney:



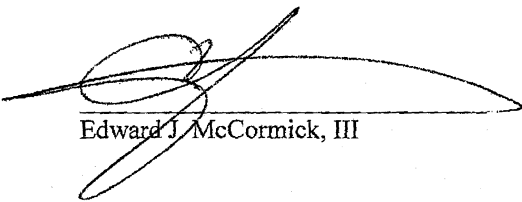
Stephen C. Pfaff
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CERTIFICATE OF SERVICE

I, Edward J. McCormick, III, certify that on this 11th day of May, 2004, I have served a true copy of the following via first class mail, to Stephen C. Pfaff, Esq., Merrick, Louison & Costello, LLP, 67 Batterymarch Street, Boston, MA 02110:

1. Joint Statement.


Edward J. McCormick, III

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH CHRISTOFORO,
Plaintiff

VS.

JULIO LUPO

Defendant

Docket No. 03-12307 RGS

**AFFIDAVIT OF JAY HODAPP IN SUPPORT OF
DEFENDANT'S EMERGENCY MOTION TO STRIKE PLAINTIFF'S
LATE FILED MOTION FOR SUMMARY JUDGMENT**

I, Jay Hodapp, on oath, depose and state as follows:

1. I am one of the Defendant's attorneys in the above-entitled matter and am in good standing as an attorney in the Commonwealth of Massachusetts;
2. I have personal knowledge of the following;
3. On **September 14, 2007** I had a conversation with Attorney Edward McCormick relative to matters concerning the upcoming trial in the above-entitled matter. During that conversation, Attorney McCormick and I did not discuss the filing of a Motion for Summary Judgment by the Plaintiff.

Subscribed and sworn to under the pains and penalties of perjury this **18th** day of **September, 2007**.

/s/Jay Hodapp
Jay Hodapp

Exhibit 2